



W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017

Tamilnadu Diploma Engineers Association -
(Department of Employment and Training)
Rep. by its President,
12E, Seelavari Housing Board,
Puthumariamankoil Post,
Salem – 636 003.

... Petitioner

Vs

- 1.The Inspector General of Registration,
O/o.Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.
- 2.The District Registrar (Administration),
Additional In Charge, Salem East,
Salem District.
- 3.The Registrar of Societies,
District Registrar Office,
Salem East, Salem.
- 4.Tamil Nadu Diploma Engineers Association,
Rep. by its President,
5/1299-1, Kamaraj Street,
Ilakkiyampatti,



W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017

Dharmapuri – 636 705.
spondents

... Re-

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the notice of the 2nd respondent dated 13.02.2017 and quash the same and consequently forbearing the respondents from disturbing the functioning of the petitioner association in the name of “Tamil Nadu Diploma Engineers Association (Department of Employment and Training)”.

For Petitioner : Mr.G.Pugazhenth

For Respondents : Mr.B.Vijay,
Additional Government Pleader – R1 to R3

Mr.N.Palani Kumar
for Mr.P.Kannan Kumar - R4

ORDER

The present writ petition has been filed by a society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 (in short 'Act') with the name 'Tamilnadu Diploma Engineers Association' at Salem.

2.The Association is stated to have been formed to address the welfare of the Diploma Engineers working in the Department of Employment and Training and has been registered on 02.02.2012. The petitioner appears to have been aware of the fact that there was an earlier Association registered with the



W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017

identical name bearing registration No.81 of 1985 having its office at 16, N.N.Gardens 1st Lane, Washermenpet, Chennai – 600 021.

3.However, proceeding on the basis that the website of the Registration Department reflected non-functioning of the said association for the last thirty years, the last date of filing being 12.05.1986, the petitioner appears to have assumed that the association is defunct and hence, non-functional. The affidavit filed in support of this writ petition also avers that the petitioner was given to understand that in the last general body meeting convened on 02.01.2017, the name of that society was changed to “Tamilnadu Industrial Training Department Diploma Engineers Association”.

4.It is in such circumstances that the petitioner challenges impugned notice dated 13.02.2017, calling upon it to change the name for reasons of identity with the name of the 1985 association in Chennai. The provisions of Section 7 of the Act stipulate that there shall not be more than one association within a specified territorial limit which have the name similar or identical to each other.

5.Evidently, the name of the petitioner association is identical to the name of the 1985 Association which is arrayed as respondent No.4. R4 is represented by Mr.N.Palani Kumar appearing for Mr.P.Kannan Kumar, who would, with



the aid of a compilation filed on 24.11.2022, establish the position that R4 society is, in fact, very much in existence as on date, though not active in the list.

6.The provisions of Section 44 of the Act assume some relevance insofar as it vests a responsibility upon the authorities to take appropriate measures as against defunct registered societies and societies which have not been compliant with various statutory obligations such as filing of annual return. The compilation relied on by R4 reveals exchange of various communications from 2012 till 2022 pointing out various defects in the functioning of R4 society.

7.However, and this is a fact, R4 society has not been struck off the rolls as is provided for under Section 44(3)(b) of the Act. In the interest of completion of narration, the provisions of Section 44 to the extent to which they are relevant are extracted below:

“44. Removal of defunct registered societies.-

(1) Where the Registrar has reasonable cause to believe that a registered society is not carrying on business or in operation, he shall send to the registered society by registered post a letter enquiring whether the society is carrying on business or in operation.

(2) If the Registrar either receives an answer from the Registered society to the effect that it is not carrying on business or in operation, or does not within such period as may be prescribed after sending the letter receive any



W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017

WEB COPY

answer, he may publish in the Tamil Nadu Government Gazette, and send to the registered society by registered post, a notice that, at the expiration of such period as may be prescribed from the date of such publication, the name of the registered society mentioned therein will, unless cause is shown to the contrary, be struck off the register and the registered society will be dissolved.

(3) If, in any case where a registered society-

(a) is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the registered society have been completely wound up; or

(b) has not, for three consecutive financial years, filed with the Registrar all or any of the documents referred to in clause (b) of sub-section (3) of section 16, the Registrar may publish in the Tamil Nadu Government Gazette, and send to the registered society by registered post, a like notice as is provided in sub-section (2) of this section.

(4) At the expiration of the time mentioned in the notice referred to in sub-section (2), or sub-section (3), the Registrar may, unless cause to the contrary is previously shown by the registered society, strike its name from the register and shall publish notice thereof in the Tamil Nadu Government Gazette, and, on the publication of such notice, the registered society shall be deemed to be dissolved.”

8.In light of the fact that R4 society is very much existent on the rolls, I

am of the view that the bar under Section 11 that reads as follows would stand triggered:

“11. Change of name of registered society.- (1) Any registered society may, by special resolution and with the approval in writing of the Registrar, change its name:



W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017

WEB COPY

Provided that if a society, through inadvertance or otherwise, is registered by a name identical with that by which a society in existence is previously registered or so nearly resembling it as to be calculated to deceive, the first mentioned society may, with the approval in writing of the Registrar, change its name.”

9.The naming of the petitioner society has been proceeded on the basis that R4 society was defunct as reflected in the website of the Registration Department and hence, no motives are attributed to the petitioner in the choice of name. Let the petitioner society select an appropriate name and approach the Registrar of Societies / R3 for appropriate orders for change of name.

10.Such application be filed by the petitioner within a period of four (4) weeks from date of receipt of a copy of this order and orders be passed thereupon by the Registrar / R3 within another four (4) weeks thereafter, after hearing the petitioner society.

11.This writ petition is dismissed in the aforesaid terms though with liberty as above. No costs. Consequently, connected miscellaneous petitions are closed.

05.12.2022

kbs

Index : Yes / No

Speaking Order



WEB COPY



W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017

To

- 1.The Inspector General of Registration,
O/o.Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.
- 2.The District Registrar (Administration),
Additional In Charge, Salem East,
Salem District.
- 3.The Registrar of Societies,
District Registrar Office,
Salem East, Salem.
- 4.Tamil Nadu Diploma Engineers Association,
Rep. by its President,
5/1299-1, Kamaraj Street,
Ilakkiyampatti,
Dharmapuri – 636 705.



WEB COPY



W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017

Dr.ANITA SUMANTH, J.

kbs

**W.P.No.7408 of 2017 &
WMP.Nos.8062 & 8063 of 2017**

05.12.2022